

IC 35-36-9

Chapter 9. Pretrial Determination of Mental Retardation in Death Sentence Cases

IC 35-36-9-1

Applicability

Sec. 1. This chapter applies when a defendant is charged with a murder for which the state seeks a death sentence under IC 35-50-2-9.

As added by P.L.158-1994, SEC.3. Amended by P.L.2-1996, SEC.283.

IC 35-36-9-2

"Mentally retarded individual" defined

Sec. 2. As used in this chapter, "mentally retarded individual" means an individual who, before becoming twenty-two (22) years of age, manifests:

- (1) significantly subaverage intellectual functioning; and
- (2) substantial impairment of adaptive behavior;

that is documented in a court ordered evaluative report.

As added by P.L.158-1994, SEC.3.

IC 35-36-9-3

Petition alleging mental retardation; filing

Sec. 3. (a) The defendant may file a petition alleging that the defendant is a mentally retarded individual.

(b) The petition must be filed not later than twenty (20) days before the omnibus date.

(c) Whenever the defendant files a petition under this section, the court shall order an evaluation of the defendant for the purpose of providing evidence of the following:

- (1) Whether the defendant has a significantly subaverage level of intellectual functioning.
- (2) Whether the defendant's adaptive behavior is substantially impaired.
- (3) Whether the conditions described in subdivisions (1) and (2) existed before the defendant became twenty-two (22) years of age.

As added by P.L.158-1994, SEC.3.

IC 35-36-9-4

Hearing on petition

Sec. 4. (a) The court shall conduct a hearing on the petition under this chapter.

(b) At the hearing, the defendant must prove by clear and convincing evidence that the defendant is a mentally retarded individual.

As added by P.L.158-1994, SEC.3.

IC 35-36-9-5

Determination within ten days of trial

Sec. 5. Not later than ten (10) days before the initial trial date, the court shall determine whether the defendant is a mentally retarded individual based on the evidence set forth at the hearing under section 4 of this chapter. The court shall articulate findings supporting the court's determination under this section.

As added by P.L.158-1994, SEC.3.

IC 35-36-9-6**Dismissal of death sentence charges against mentally retarded individual**

Sec. 6. If the court determines that the defendant is a mentally retarded individual under section 5 of this chapter, the part of the state's charging instrument filed under IC 35-50-2-9(a) that seeks a death sentence against the defendant shall be dismissed.

As added by P.L.158-1994, SEC.3.

IC 35-36-9-7**Sentencing of mentally retarded individual convicted of murder**

Sec. 7. If a defendant who is determined to be a mentally retarded individual under this chapter is convicted of murder, the court shall sentence the defendant under IC 35-50-2-3(a).

As added by P.L.158-1994, SEC.3.